

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JENNIE COURTNEY, ETC.,)
)
Plaintiff,)
)
vs.) Civil Action No.: 2:06-CV-00600-MHT
)
ANTHONY CLARK, et al.,)
)
Defendants.)

**DEFENDANT COVINGTON COUNTY'S
MOTION TO STRIKE EXHIBIT A TO PLAINTIFF'S RESPONSE BRIEF
IN OPPOSITION TO THE MOTION TO DISMISS**

COME NOW Covington County, Alabama, a Defendant in the above-entitled action, and requests an Order striking "Exhibit A," attached to the Plaintiff's Response Brief in Opposition to the Defendant Covington County's Motion to Dismiss. In support thereof, the Defendant sets forth and states as follows:

1. The Plaintiff attached "Exhibit A" to her Response Brief in Opposition to the Defendant Covington County's Motion to Dismiss.
2. "Exhibit A" purports to be a copy of an Alabama Bureau of Investigations ("ABI") investigative report.
3. The Amended Complaint makes no reference whatsoever to this ABI report.
4. A motion to dismiss for failure to state a claim merely tests the sufficiency of the complaint. Milburn v. United States, 734 F.2d 762, 765 (11th Cir. 1984). A review under Rule 12(b)(6) is therefore limited to the four corners of the Complaint. See Sims v. Forehand, 112 F. Supp. 2d 1260, 1271 (M.D. Ala. 2000); Caravello v. American Airlines, Inc., 315 F. Supp. 2d 1346, 1348 (S.D. Fla. 2004); Crowell v. Morgan Stanley Dean Witter Servs., Co., Inc., 87 F. Supp. 2d 1287, 1290 (S.D. Fla. 2000).

5. "Exhibit A" to the Plaintiff's Response Brief in Opposition to the Defendant Covington County's Motion to Dismiss does not fall under a recognized exception to this rule, such as when a plaintiff refers to a document in his complaint and that document is central to the claim, the Court may consider the document part of the pleadings for purposes of Rule 12(b)(6). Brooks v. Blue Cross and Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997).

6. "Exhibit A" to the Plaintiff's Response Brief in Opposition to the Defendant Covington County's Motion to Dismiss is due to be stricken because evidentiary materials not specifically referenced in a complaint, or central to the claims contained therein, cannot be considered on a motion to dismiss.

Defendant requests an opportunity to be heard orally on this motion.

CONCLUSION

Based upon the foregoing, Defendant requests that this Court strike "Exhibit A" to the Plaintiff's Response Brief in Opposition to the Defendant Covington County's Motion to Dismiss.

Respectfully submitted this 17th day of August , 2007.

s/**Joseph L. Hubbard, Jr.**
DARYL L. MASTERS Bar Number: MAS018
GARY L. WILLFORD, JR. Bar Number: WIL198
JOSEPH L. HUBBARD, JR. Bar Number: HUB015
Attorneys for Defendant
WEBB & ELEY, P.C.
7475 Halcyon Pointe Road
Post Office Box 240909
Montgomery, Alabama 36124
Telephone: (334) 262-1850
Fax: (334) 262-1889
E-mail: gwillford@webbeley.com

CERTIFICATE OF SERVICE

I hereby certify that on this the **17th** day of **August, 2007**, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **Will G. Phillips, Esquire, J. David Greene, Esquire, Britt V. Bethea, Esquire, Bert P. Taylor, Esquire, Steven K. Herndon, Esquire, Matthew Y. Beam, Esquire, Alan T. Hargrove, Jr., Esquire, and Richard Brett Garrett, Esquire**, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Oscar Roy Doster, AIS # 177168
P. O. Box 150
Mt. Meigs, AL 36057

James Darren Harnage, AIS # 239251
P. O. Box 150
Mt. Meigs, AL 36057

s/**Joseph L. Hubbard, Jr.**
OF COUNSEL